IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 126 of 2003

with

CRIMINAL APPEAL No 168 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJU MURGESHAN PILLAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 126 of 2003

MS ROOPAL R PATEL for Appellant No.

THROUGH JAIL for Appellant No.

MR AD OZA PP WITH

MR KP RAVAL APP for Respondent No. 1

2. Criminal Appeal No. 168 of 2003

MR BS PATEL for Appellant No.

MR AD OZA PP WITH

MR KP RAVAL APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 20/01/2005

ORAL JUDGEMENT

1. Present appeals have been preferred against the order of conviction passed by the Joint District & Addl. Sessions Judge, 3rd Fast Track Court, Surat in Sessions Case No.11 of 2001 dated 30-11-2002, whereby the present appellants have been convicted for the offence punishable u/s 328 of the I.P. Code and sentenced to undergo rigorous imprisonment for five years and fine of Rs.1000/- in default to undergo simple imprisonment for three months and for the offence punishable u/s 379 of the I.P. Code the appellants have been sentenced to undergo rigorous imprisonment for three years and both the sentences are ordered to run concurrently.

2. If the prosecution case is unfolded, the facts of the prosecution case are as under :

3. The complainant was waiting for train at Surat railway station on 1-10-2000 and at that time the present appellants came to the complainant and offered him ice-cream which initially he refused to take but upon constant insistence by the appellants, the complainant took the ice-cream which was brought by the appellants and meanwhile the train came and he boarded the train and sat in the train and thereafter he became unconscious and he was found in unconscious condition at Vadodara railways station in general coach of Arvalli Express train. The police took the complainant and admitted him to S.S.G. Hospital, Vadodara. Thereafter, the complaint was filed on 2-10-2000 before the Police Inspector, Vadodara, Railways Police Station. He gave details of all the items which were in his suitcase and the said suitcase was also stolen and his wristwatch, gold ring and money purse were also stolen. It is also mentioned in the complaint that because of long talk with the appellants-accused he is able to identify the accused persons.

4. The appellants were found wondering and loitering on Vadodara railway platform on 13-10-2000. The police was having speicific information that certain accused persons are compelling the train passengers to consume intoxicated substance and are robbing them after making them unconscious. This is how passengers being looted by the accused persons and their properties are being stolen

by the accused. Therefore, the police was watching on railway platform at Vadodara. The appellants were found out by the Railways Police at Vadodara from railway platform, Vadodara as they are moving suspiciously on 13-10-2000 at about 14-05 hours and both the appellants were interrogated and they could not give satisfactory answers and therefore both the appellants were taken to L.C.B. Office, Vadodara and they were having one bag each wherein certain items including visiting cards, money purse, two strips of larpose tablets of 2 mg (each of 10 tablets) were found and white powder was also found from the said bags. Upon investigation, it was found that the items were belonging to the persons who had filed the complaint on 1-10-2000 before Vadodara Railway Police Station. Identification parade was also held and both the appellants were identified in the presence of the Executive Magistrate. After filing of the charge sheet the case was committed to the Sessions Court, Vadodara and after the full-fledged trial of the case, the appellants were convicted as aforesaid and therefore the appellants have preferred the present appeals before this Court agaisnt the conviction order passed by the trial Court.

5. Heard the learned advocates for the appellants and learned A.P.P.

6. Learned counsel for the appellants submitted that panchas of identification parade i.e. P.W. No. 1 Exh. 13 namely Chandrakant has turned hostile and therefore the panchnana of test identification parade is not proved. It is also submitted by the learned counsel for the appellants that test identification parade is highly defective mainly for the reasons that similarly situated persons were not called by the Executive Magistrate before the complainant who identified the appellants. Learned counsel for the appellants also submitted that recovery of muddamal articles is not proved as the panch witnesses of recovery of muddamal panchanama i.e. P.W. No. 4 at Exh. 20 - Raghunath Sharma has also turned hostile. It is contended by the learned counsel for the appellants that there is no F.S.L. report before the Court which points out that which was the intoxicated substance in the stomach of the complainant. The complainant had become unconscious because of intoxicated substance. This fact has not been proved by the prosecution. Thus, consumption of intoxicated substance by the complainant is not proved. Panch witness Exh.32 P.W. No. 10 namely Munaf Mahmad Shaikh has also turned hostile. Rest of the witnesses are the police witnesses.

Only on the basis of suspicion the appellants were arrested and prosecution has failed to prove that the appellants had given intoxicated substance along with the ice-cream to the complainant and therefore the complainant had become unconscious and his goods were stolen by the present appellants and therefore the order of conviction passed by the trial Court against the appellants is, illegal and erroneous, and the same deserve to be quashed and set aside.

7. Learned A.P.P. pointed out by detailed reading of the depositions of the prosecution witnesses that the present appellants were identified by the complainant in presence of the Executive Magistrate. Looking to the deposition of P.W. No. 2 - Mumtaj Ali Exh.15 who is the Executive Magistrate it is proved beyond reasonable doubt that the appellants were identified by the complainant. The complainant was having sufficient talk with the appellants at the railway platform. Initially, the complainant refused to consume ice-cream brought by the appellants, but upon constant insistence by the appellants for consuming the ice-cream the complainant consumed the ice-cream brought by the appellants. Even though the complainant was denying ice-cream was brought and provided by the appellants to the complainant. Intoxicated substance was added in the ice-cream which was consumed by the complainant, and therefore, the complainant had become unconscious and his belongings including the suitcase were stolen away by the present appellants. There is no irregularity in the identification parade. The persons of the same group were called by the Executive Magistrate. Deposition of the Executive Magistrate is explicitly clear and nothing is being shaken out in the cross-examination of the Executive Magistrate Exh.15. There is no much time gap between arrest of the appellants and holding of test identificaiton parade. Complainant has to be called for and thereafter test identification parade can be held. After arrest of the appellants, immediately on 19-10-2000 identification parade was held.

8. It is submitted by the learned A.P.P. that the deposition of P.W. No. 3 who is the complainant at Exh.18 categorically reveals as to how the offence has taken place and as to how the appellants insisted upon the complainant to consume intoxicated ice-cream and thereafter the complainant consumed intoxicated ice-cream which was brought by the appellants and hence the complaint become unconscious. Police took and admitted the complainant to S.S.G. Hospital, Vadodara. So far as other belongings like money purse, gold ring, etc. are

concerned, there are no contradictions and omissions in his deposition. Deposition of the complainant who is the victim has clearly and categorically given narratation of the entire incident as to how the offence is committed by the appellants.

9. Learned A.P.P. submitted that the depositions of Doctors at Exh.25, 29 and 31 as P.W. Nos. 7, 8 and 9 respectively, clearly reveal that the complainant was brought with Police Yadi and at that time the complainant was semi-conscious. When history of the appellants asked, it was conveyed by the complainant that he became conscious as some one had compelled him to consume intoxicated substance. Dr. Ranjit S. Chaudhari Exh.29 has stated that the patient (the complainant) had become unconscious because of consumption of some intoxicated medicine. Similar opinion has been given by Dr. Mahednra C. Parmar Exh.31 that the patient had become unconscious because of consumption of intoxicated medicine. Such medicine can be given to any one by mixing it in ice-cream or milk or in any gold-drink. It is also stated by the said witness Exh.31 that the sample of substance from the stomach of the complainant was drawn and was sent to F.S. Laboratory and the report of F.S. Laboratory was received. The said report of F.S.L. reveals that it was larpose drug and if such drug is consumed, the person becomes unconscious.

10. It is submitted by the learned A.P.P. that though the panchas have turned hostile regarding recovery of the muddamal articles belonging to the complainant, the panchas have admitted their signature in the panchanams. None the less, P.W. No.11 who is the Police Officer examined at Exh.34 - Revabhai Majibhai has narrated in detail as to how the present appellants were arrested. He has deposed in his deposition that the muddamal articles were recovered at the behest of the appellants and the said muddamal articles were belonging to the complainant like money purse, gold ring, visiting card and other items were identified by the complainant. P.W. No. 15 at Exh. 41 Mahmad Ali has also given clear deposition right from arrest of the appellants till identification of the appellants by the complainant in identifiation parade and also as to the muddamal goods which were found out from the possession of the appellants, which were in fact, belonging to the complainant. It is submitted by the learned A.P.P. that such type of offences are increasing day by day in the society. The accused appellants had intention to commit the theft of belongings of the complainant and therefore they deliberately insisted the complainant to consume ice

cream. Though repeatedly the complainant was requested to consume the same, but ultimately upon much insistence the complainant accepted ice-cream and consumed the same and thereafter the complainant became unconscious. Recovery of the goods and identification of the appellants in test identification parade corroborated the allegation referred in the F.I.R. as well as to the deposition of the complainant at Exh. 18. Evidence of the independent witnesses i.e. Doctors Exh.25, 29 and 31 - Dr. Atul Gupta, Dr. Ranjit Chaudhari and Dr. Mahendra Parmar also supports the case of the prosecution. The Executive Magistrate who held test identification parade has also narrated the fact of identification of the appellants vide his deposition Exh.15.

11. It is submitted by the learned A.P.P. that looking to totality of the evidence led by the prosecution i.e. evidence of the prosecution witnesses namely, the complainant, Executive Magistrate, depositions of aforesaid three doctors, two police officers Exh.34 and 41, the offence levelled against the appellants has been proved beyond reasonable doubt. The appellants who were present at the railway station at Surat gave intoxicated ice-cream to the complainant and larpose drug in the form of tablets have also been found from possession of the appellants. There was white substance in the packets. As per F.S.L. report at Exh.43, the said substance was diazopine drug. Thus, the offences levelled against the appellants have been proved beyond reasonable doubt. Therefore, the order of conviction passed by the trial Court is true and correct and is in consonance with facts and law and the appellants have been adequately punished and hence the present appeals may kindly be dismissed.

12. Looking to the facts and circumstances of the case, the evidence of the prosecution witnesses and documents produced before the trial Court, the conviction order passed by the trial Court is true and correct and I see no reason to interfere with the aforesaid conviction order passed by the trial Court and therefore conviction and quantum of sentence imposed by the trial Court to the appellants is just, proper and correct for the following reasons :

i. Victim i.e. the complainant wanted to travel from Surat and therefore he had gone to Surat railway station where he found that some two unknown persons were trying to talk with him when he was going from Surat to Ajmer. Railway ticket

was also produced by the complainant. Those two unknown persons had also told the complainant that they also want to go to Ajmer. Narration and description of those two persons has been given by the complainant in his complaint. Thereafter, the said two unknown persons insisted the complainant to have some ice-cream which was initially refused by the complainant and upon too much insistence from them, the complainant consumed some ice-cream and then the train came he boarded the train and subsequently he became unconscious. The complainant was found in unconscious condition at Vadodara railway station and the police took him to S.S.G. Hospital, Vadodara and on next day i.e. 2-10-2000 immediately upon getting consciousness, the complaint, in detail, was given by the complainant to the Railway Police at Vadodara. In the said complaint narration of the appellants - accused and the stolen items namely money purse, large size suitcase of grey colour, wrist watch, gold ring etc. was given. It is also narrated in the complaint that the complainant can identify the accused, if the accused are shown to him. Thus, immediately the complaint was given after the complainant regained consciousness and there is no delay in filing the complaint.

ii. It is evident from the depositions of the prosecution witnesses especially of P.W. No.11, P.W. No.15 at Exh.34 and 41 respectively that the two persons i.e. appellants were found moving suspiciously at Vadodara platform on 13-10-2000. Police was also having some complaint to the effect that some persons are mixing intoxicated substance in the eatable items and thereafter convenince or compel the passenger to consume the same and that is how the passengers are looted and their belongings were stolen. Therefore, vigilant eye of the police was kept at Vadodara railway police station. During this time, the two persons i.e. present appellants were found moving suspiciously by the police and they were interrogated by the police but they could not give satisfactory reply and the expert eye could immediately suspect and hence police asked the appellants and ultimately the appellants were arrested and detailed narration has been given by the prosecution witnesses who are examined at Exh.34 and 41.

Thereafter, identification parade was held by the Executive Magistrate. Muddamal articles were recovered and identified by the complainant. Though panch witnesses of recovery panchanama have turned hostile, I believe that witnesses examined at Exh.34 and 41 are trustworthy and independent witnesses. Panchnama Exh.33 was drawn in presence of the police witnesses who have given clear cut deposition. Cross-examination of those witnesses is not bringing out any major omissions and contradictions. The said panchnama was signed by the hostile witnesses, even as per their own depositions.

iii. The complainant i.e. victim of the incident has identified the present appellants in the test identification parade and in the deposition of the complainant this aspect of the matter has already been narrated which is also corroborated by the deposition of the prosecution witness namely Executive Magistrate examined at Exh.15. Deposition of the Executive Magistrate - Mr. Mumtazali has clearly narrated that the present complainant has identified the present appellants and similar group of persons of age and description were called for and they were compelled to stand in que and thereafter the complainant was brought for identifying the accused and the complainant had identified the both appellants one by one. The Executive Magistrate is an independent witness who has nothing to do with conviction or acquittal. The Executive Magistrate has given explicit and clear deposition before the Court and there are no major omission or contradictions in his deposition and from his deposition I believe that he is a trustworthy and independent witness. The complainant has identified the appellants in test identification parade and this fact is proved by the deposition of the complainant Exh.18 to be read with the deposition of the Executive Magistrate at Exh.15 along with panchnama Exh.14 which is of test identification parade.

iv. There is enough corroboration to the entire narration given in the complaint as well as to the deposition of the complainant, by the depositions of the prosecution witnesses examined at Exh.25, 29 and 31 i.e. Dr. Atul Gupte, Dr. Ranjit Chaudhari and Dr. Mahendra C. Parmar

respectively. Dr. Atul Gupte has stated in his deposition that he had examined the complainant when he was brought at S.S.G. Hospital, Vadodara and at that time he was in unconscious condition. It is also stated by Dr. Atul Gupte Exh.25 that when case history was asked the police stated that some intoxicated substance has been consumed by the complainant. Dr. Ranjit Chaudhari Exh.29 has stated that when the complainant was brought, he was unconscious condition and on the next day he regained consciousness and he also stated that some intoxicated drug was consumed by the complainant and therefore the complainant had become unconscious. Similarly, Dr. Mahendra C. Parmar Exh. 31 has stated that in his opinion, the complainant had become unconscious because of consumption of some intoxicated drug and such drug can be mixed with the ice-cream, milk, cold drink etc. and the person may remain unconscious for 6 to 24 hours. It is also stated by the said Doctor that some substance from the stomach of the complainant was drawn and was sent to F.S.L. for analysis thereof. It is also stated by the said Doctor that as per F.S.L. report the said substance was a "drug" namely larpose and if such drug is consumed by a person, the person becomes unconscious. There is no cross-examination so far as F.S.L. report is concerned as pointed out by the said witness in his examination in chief. The said Doctor has given clear deposition that he has drawn sample of the substance from the stomach of the complainant and the same was sent to F.S.L. The report of F.S.L.. has also been read over by the said Doctor. What was stated in the F.S.L. report, has also been narrated by the Doctor in his examination-in-chief that it was the drug namely larpose. No cross-examination to the aforesaid aspect of the matter by the accused of the said witness is done. Doctors are independent witnesses. They have examined the complainant. They had given treatment to the complainant. I found them trustworthy.

v. Muddamal articles were recovered at the behest of the accused. There were two strips of larpose each containing 10 tablets and there was powder in another packet and as per the report of F.S.L., said powder was larpose. The said substance was found from the stomach of the complainant. If the deposition of the complainant is perused, then it is proved beyond

reasonable doubt that the appellants had mixed intoxicated drug with the ice-cream and insisted upon the complainant to consume the same but initially the complainant had refused and upon constant insistence by the appellants, ultimately the complainant consumed the ice-cream brought by the appellants and thereafter the train came. The ticket of the train was purchased by the complainant for going from Surat to Ajmer and the complainant boarded the train and thereafter the complainant had became unconscious in the train and his belongings were looted. Thus, looking to the depositions of the prosecution witnesses including independent witnesses like the Executive Magistrate who held the test identification parade aforesaid three different doctors of S.S.G. Hospital, Vadodara coupled with the depositions of the Police Officers at Exh.34 and 41, I am of the opinion that the evidence of these witnesses have been corroborated by the deposition of the complainant as well as the complaint Exh.18 and thus the offence levelled against the appellants is proved beyond reasonable doubt.

vi. Contention of the learned advocate for the appellants is that there is delay in holding test identification parade. The appellants were arrested on 13-10-2000 whereas test identification parade was held on 19-10-2000 and therefore the no reliance should be placed upon test identification parade. In fact, if we minutely peruse the evidence produced on the record, it appears that there is no delay in holding test identification parade. There are no such hard and fast mathematical rules that no sooner did accused are arrested immediately within next hour they must be identified. After arrest of the accused the police is interrogating the accused for first 24 hours then the accused are required to be produced before the concerned J.M.F.C. thereafter if police thinks fit remand will be sought for. Upon completion of remand, again the accused will be presented before the Magistrate and thereafter notice of identification parade is required to be issued to the complainant and this entire procedure takes some time. The complainant has to come and thereafter the Executive Magistrate shall have to fix the time for test identification parade. These factors are delaying the process of holding

effective test identification parade. In the preesnt case, remand of the accused was sought and remand was given for 2 days. Looking to the facts and circumstances of the case, in my view, there is no
delay in holding test identification parade. Second contention raised by the learned counsel for the appellants is that similar situated persons like the present appellants were not called for during test identification parade. But this contention raised by the learned counsel for the appellants is not helpful to the present appellants looking to test identification parade, panchanama and depositions of the prosecution witnesses. The persons called for test identification parade were of similar in age of the appellants. The appellants cannot expect that the persons called for test identification parade should have similar face like the appellants. Face by face matching of the persons called in the test identification parade with the appellants is practically impossible. Looking to the deposition of the Executive Magistrate who is an independent witness, I have no reason to discard test identification parade. Deposition of the P.W. No.2 Executive Magistrate Exh. 15 is trustworthy and reliable. Lastly, it is contended by the learned counsel for the appellants is that though there is F.S.L. report regarding the powder recovered at the behest of the appellants, there is no document on the record as to viscera i.e. substance drawn from the stomach of the complainant and therefore it is not proved by the prosecution that what was the substance in the stomach of the complainant. This argument advanced by the learned counsel for the appellants is also not helpful to the present appellants for the reason that there crystal clear and unambiguous evidence of the independent witness i.e. Dr. Mahendra C. Parmar Exh.31 who has categorically stated in his deposition that the patient was unconscious when he was brought to S.S.G. Hospital, Vadodara on 1-10-2000 and the patient remained unconscious on that day and on the next day the patient regained his consciousness. The patient was examined by Dr. Mahendra C. Parmar. It is also deposed by prosecution witness Dr. Mahendra C. Parmar as per his opinion the patient was unconscious because of consumption of some intoxicated substance and such intoxicated substance can be

mixed with ice-cream, milk or cold-drink and by giving such items person can be made unconscious. Sample of substance from the stomach of the complainant was drawn and the same was sent to F.S.L., Ahmedabad. It is also stated by Dr. Mahendra C. Parmar in his deposition that F.S.L. report gives opinion that it was larpose drug and if such drug is consumed, person can become unconscious. Medical Certificate Exh. 26 was also referred by the said prosecution witness Dr. Mahendra C. Parmar. Prosecution Witness Dr. Mahendra C. Parmar has given clear deposition as to drawing of substance from the stomach of the complainant and sending the same to F.S.L., Ahmedabad and the report of F.S.L.. is also referred by him in his deposition. But there is no cross-examination assailing the F.S.L. report which is referred by the prosecution witness Dr. Mahednra C. Parmar in his deposition Exh. 31. Mistake on the part of the prosecution in not bringing the said document on record is not advantageous position to the accused. Fallacy or mistake or lapse at the most negligence on the part of the prosecution in not bringing this document which is read over and referred by the Doctor for which there is no cross-examination at all by the accused, cannot give any advantage to

the accused and I have no reason to disbelieve the deposition of prosecution witness Doctor Mahendra C. Parmar Exh.31. Dr. Mahendra C. Parmar Exh.31 is a natural witness who has examined the complainant and is a trustworthy and reliable witness.

13. For the aforesaid reasons, the offences charged against the appellants are proved by the prosecution beyond reasonable doubt. No other view is permissible looking to the facts and circumstances of the case and the depositions of the prosecution witnesses as well as the documents on record. Therefore, the order of conviction passed by the trial Court is true, correct and in consonance with facts and law and sentence awarded to the appellants by the trial Court is also just, proper, adequate and in consonance with the guilt of the appellants. In my opinion, quantum of punishment is not excessive and unreasonable. Apart from applying various theories of punishment, the fact remains that there must be at least deterrent effect upon the members of the society. Such type of offences are being frequently committed upon innocent members of the society.

Punishment is awarded by the competent court keeping in mind the guilt of the accused. Looking to the guilty, the quantum of punishment awarded to the accused is also equated.

14. For the forgoing reasons, there is no substance in the above appeals. Therefore, both these appeals are dismissed.

(D.N. Patel, J.)

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